



INFORMATION-GATHERING PHASE: Developing A Versatile Juvenile Code For Indian Country



GOAL: To inform Indian Country that the BIA is rolling out a Discussion Draft to facilitate an information-gathering phase before creating a draft code for future formal consultation.

CONTACTS:

Ron Whitener (ronw@cirj.org), Center for Indigenous Research & Justice; University of Washington Law School; Associate Judge – Tulalip Tribes

Natasha Anderson (bia_tribal_courts@bia.gov), Deputy Associate Director, Tribal Justice Support, Office of Justice Services, Bureau of Indian Affairs

James Antal (james.antal@usdoj.gov), Acting Associate Administrator, Youth Development Prevention and Safety Division, Office of Juvenile Justice and Delinquency Prevention, Department of Justice

SUMMARY:

The purpose of a “Discussion Draft” is to facilitate discussion and seek information from tribal leaders, juvenile justice professionals, and Indian Country in general. The Discussion Draft¹ contains ideas for updating the Model Indian Juvenile Code. It has been developed by Professor Ron Whitener, faculty member for the University of Washington Law School's Native American Law Center (UW NALC); President of the Center of Indigenous Research and Justice, a non-profit corporation affiliated with the UW NALC; and Associate Judge for the Tulalip Tribes.

There will be multiple mechanisms for input and comment during this information-gathering phase. Written comments may be sent to bia_tribal_courts@bia.gov.

The goal is to finalize a draft for publication in the Federal Register by the end of November 2015. Early 2016 will then be the formal consultation phase of the Model Indian Juvenile Code Revision.

¹ Download the PDF directly at <http://www.bia.gov/cs/groups/xojs/documents/document/idc1-030469.pdf>; or Visit the TJS webpage at <http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm> where one can find updated versions of the Discussion Draft as well as a PDF of an in-depth PowerPoint presentation.

Q & A:

How Should Tribes Use The Model Indian Juvenile Code?

The 2015 Model Indian Juvenile Code is intended to be a sample juvenile code to assist tribal governments as a tool in creating or revising their juvenile codes.

Why Update The Model Indian Juvenile Code?

Most codes should be updated on a regular basis; and it has been over 25 years since the first Model Indian Juvenile Code was created. The BIA contracted with the National Indian Justice Center to develop the first Code in 1988 after the passage Public Law 99-570, title IV, § 4221, which required the creation of a “Model Indian Juvenile Code” (25 U.S.C. 2454).

Since the creation of the original Model Indian Juvenile Code, much has changed in the field of juvenile justice. Since the late 1980s, many jurisdictions have engaged in reforms of their juvenile justice systems in response to research finding that the standard juvenile justice system model used in the United States showed no impact to juvenile delinquency and may have, in fact, increased delinquency rates. Research has also found that adolescent brains develop later in life than previously thought. Researchers, advocates and policy makers urge changes to the more punitive models of juvenile justice and encourage systems that are more restorative.

Additionally, after the passage of the Tribal Law and Order Act of 2010, a Memorandum of Agreement between DOI, DOJ, and DHHS was developed to establish a framework for collaboration that results in the coordination of resources and programs. The MOA specifically referenced 25 U.S.C. 2454 and the Model Indian Juvenile Code.

Juveniles’ Rights; and Keeping Tribal Youth Out Of Jail And In The Community

The Discussion Draft of the 2015 Model Juvenile Code is divided into three categories: 1) Delinquency; 2) Child in Need of Services; and 3) Truancy.

The Discussion Draft of the 2015 Model Juvenile Code focuses on several principles including, but not limited to:

- Right to Counsel for Each Child Brought Into the Juvenile Justice System;
- Right to Counsel for Parents;
- Preference for Alternatives to Secure Detention; and
- Numerous Opportunities to Divert Cases Out of Adversarial Process and into Traditional Forums as preferred by a particular Tribal Community.